



THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann

ATTORNEY GENERAL

AUSTIN 11, TEXAS

Texas State Board of Health
Austin, Texas

Attention: Mr. W. A. Davis:

Dear Sir:

Opinion No. O-2805

Re: The expiration date of the
terms of members of the State
Board of Health.

We have received your request to this department for our opinion on the propositions stated in your letter, from which we quote:

"On May 20, 1939, I asked your Department as to the terms of office of the members of the State Board of Health and was advised that 'It would be impossible for us to answer it without knowing when the respective members were appointed.'

"Senate Bill No. 47, Legislature 1931, known as Chapter 42, General and Special Laws, established the State Board of Health composed of six members to be appointed by the Governor. This bill was approved and became effective June 9, 1927.

"An amendment to this bill was passed in 1931 (H. B. 453, Chapter 266) but provided that 'The terms of office of the six present members of the Board shall not be affected by this act.'

"(1) When does the terms of office of this Board terminate?

"House Bill 453 referred to as an amendment to the 1927 law, added three new members to the Board. This bill was approved May 28, 1931 and became effective August 21, of that year.

"(2) Please advise me when the terms of office of the three additional members of the Board appointed under the provisions of H. B. 453 terminate?

"(3) Does the term of office of a member of the State Board of Health terminate six years from the date when the bill creating that office became effective, or six years from the date when the appointment was made, or six years from the date when his oath of office was filed?"

Article 4415-a, Vernon's Revised Civil Statutes, creating the State Board of Health and providing for the appointment of its members, was passed by the Acts of the 40th Legislature, 1927, First Called Session, Page 131, Chapter 42, which provides as follows:

"Sec. 2. Composition of the State Board of Health, Appointment, Term of Office: The State Board of Health shall consist of six members, who shall be appointed by the Governor, and confirmed by the Senate and who shall have the following qualifications: All members shall be legally qualified practicing physicians, who shall have had not less than five years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and graduates of recognized medical colleges. Of the six members of the Board first appointed under the provisions of this Act, two shall serve for a period of two years, two for a period of four years, and two for a period of six years, or until their successors shall be appointed and shall have qualified, unless sooner removed for cause. Immediately after this Act becomes effective, the Governor shall appoint six members to constitute the new State Board of Health created by this Act, and, in the act of appointment, shall designate the respective terms of the members first appointed. The terms of office of the members of the State Board of Health shall be six years, after the terms of the members first appointed shall have expired. The State Health Officer shall be a member ex-officio and shall act as Chairman of the State Board of Health, but shall not have the right to vote as a member of such Board except in cases of a tie vote; provided, that in no event shall he be entitled to vote in the matter of selecting the State Health Officer."

It will be noticed that the statute provides for the appointment of six members to the Board, provides for the length of their respective terms of office, but does not specify the date upon which their terms of office shall begin or terminate. The Act referred to above was approved by the Legislature and became effective on June 9, 1927. The session of the Legislature passing the Act adjourned on June 7, 1927.

Under the authority of the above Act, Governor Dan Moody on June 15, 1927, appointed six persons to the six respective offices, their names and terms as shown by the records in the office of the Secretary of State, being as follows: Dr. W. A. King, for a two-year term; Dr. J. M. Frazier, for a two-year term; Dr. E. M. Wright, for a four-year term; Dr. C. M. Rosser, for a four-year term; Dr. Joe Gilbert, for a six-year term; and Dr. A. Ar. Ross for a six-year term. Each of the named appointees, and his respective term of office, was duly confirmed and approved by the Senate of the 41st Legislature, Regular Session, 1929. See Senate Journal, page 91.

It has long been the advice of this office that where the Legislature fixes the length of a term of office, but does not prescribe the date for the beginning or the ending of the term, the beginning of the term dates from the date of the first appointment. Report and Opinions of the Attorney General, 1914-16, Page 736; Report and Opinions of the Attorney General, 1924-26, Page 344; Report and Opinions of the Attorney General, 1930-32, Pages 364 and 370; Report and Opinions of the Attorney General, 1932-34, Pages 324, 364, 368, 370, 506; Royston v. Griffin, 42 Tex. 566; 22 R.C. L. 550.

Applying the above rule to the first six appointees, named above, or each of their respective lawful successors, you are advised in answer to your first question as follows:

A. The terms of Drs. W.A. King and J. M. Frazier, respectively, began on June 15, 1927 and ended two years thereafter, on June 15, 1929. Since the law provides for a six-year term thereafter, the next six-year term of office for each of them, or for their respective lawful successors, if any, expired June 15, 1935. The next six-year term of office for each of them, or their respective lawful successors, if any, will terminate June 15, 1941.

B. The terms of Drs. E. M. Wright and C. M. Rosser, respectively, began on June 15, 1927 and ended four years thereafter, on June 15, 1931. Since the law provides for a six-year term thereafter, the next six-year term of office for each of them or their respective lawful successors, if any, expired June 15, 1937. The next six-year term for each of them, or their respective lawful successors, if any, will expire on June 15, 1943.

C. The terms of Drs. Joe Gilbert and A. A. Ross, respectively, began on June 15, 1927 and ended six years thereafter, June 15, 1933. Since the law provides for a six year term thereafter, the next six-year term of office for each of them or their respective lawful successors, if any, terminated on June 15, 1939. The next six-year term for each of them or their respective lawful successors will expire on June 15, 1945.

The 42nd Legislature, 1931, Chapter 266, Page 445, amended Article 4415-a of Vernon's Revised Civil Statutes, to read as follows:

"The State Board of Health shall consist of nine (9) members, who shall be appointed by the Governor and confirmed by the Senate, and who shall have the following qualifications: Six (6) of the members shall be legally qualified practicing physicians, who shall have had not less than five (5) years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and graduates of recognized medical colleges; of the six (6) members of the Board first appointed under the provisions of this Act, two (2) shall serve for a period of two (2) years, two (2) for a period of four (4) years, and two (2) for a period of six (6) years, or until their successors shall be appointed and shall have qualified, unless sooner removed for cause. Upon the passage of this Act, the Governor shall appoint three (3) members of the Board in addition to the six (6) members now constituting the State Board of Health; one (1) such new member shall be a Doctor of Dentistry, of reputable character, licensed under the laws of this State to practice his profession, and who has had at least five (5) years' practical experience in the actual practice of Dentistry in this State; one (1) such members shall be a Pharmacist, of reputable character, licensed under the laws of this State to practice his profession, and who has had at least five (5) years' practical experience in the actual practice of Pharmacy in this State; and one (1) such member shall be a graduate of some reputable engineering school upon whom such school has conferred the degree of Civil Engineering, and who, since graduation, for at least five (5) years has specialized in sanitary engineering in actual work in this State. The terms of office of the six (6) present members of the Board

shall not be affected by this Act, and the terms of office of the three (3) additional members shall be so arranged that one (1) shall serve for two (2) years, one (1) for four (4) years, and one (1) for six (6) years. After the expiration of the terms of the first appointees to the Board the terms of all members shall be for six (6) years. The additional members shall be allowed the same compensation in attending meetings of the Board, as well as traveling expenses, as provided by this Chapter. The State Health Officer shall be a member ex-officio of the Board, but shall not have the right to vote. The Board, shall elect a Chairman among the nine (9) members of the Board, who shall serve for a period of two (2) years or until his successor is elected."

The amended Act was duly passed, approved and became effective on May 28, 1931. That Session of the Legislature adjourned May 23, 1931.

It will be noticed that the amended statute expressly provides that the "terms of office of the six present members of the Board shall not be affected by this Act." We believe it was clearly the intention of the Legislature that nothing in the amended Act should affect the terms of office of the existing six members, and that the time fixed for the beginning and ending of their respective terms of office should not be changed or affected. It is evident that the amended Act, in part, was intended to create three additional places on the Board of Health, provide for their appointment and fix the length of their respective terms of office. The amended Act, like the original, does not specify the date when the terms of office of either of the three additional members will begin. We find nothing in the amended Act to show an intention on the part of the Legislature that the date of the beginning or the date of the ending of the respective terms of office of either of the three additional members on the Board should coincide with those of the first original six members.

It is our opinion that the same rule applies to the date of the beginning of the respective terms of office of the three additional members as we have applied to the original six members, i.e., the date of their first appointment. To determine this we must ascertain the date when the first additional members were appointed.

According to the official records of the Secretary of State, Governor R.S. Sterling, on June 12, 1931, appointed Dr. J. M. Spooner, for the two-year term; Dr. Ralph A. Ericson, for the four-year term; and Dr. G. L. Fugate for the six-year term. Dr. Fugate resigned shortly after his appointment and Dr. J. M. Howe was appointed by the Governor to fill his place. These appointees were duly confirmed by the Senate at the First Called Session, 42nd Legislature, 1931. See Senate Journal, Page 614.

You are, therefore, advised in answer to your second question, concerning the termination of the terms of office of the three additional members of the State Board of Health, that:

A. The term of Dr. J. M. Spooner began on June 12, 1931 and expired two years thereafter on June 12, 1933. Since the law provides for a six-year term thereafter, the next six-year term for him or his lawful successor, if any, expired

Dr. W. A. Davis, Page 5 (O-2805)

on June 12, 1939. The next six-year term will for him or his lawful successor, expire on June 12, 1945.

B. The term of Dr. Ralph A. Ericson began on June 12, 1931 and expired four years thereafter, on June 12, 1935. Since the law provides for a six-year term thereafter, the next six-year term for him, or his lawful successor if any, will expire on June 12, 1941.

C. The term of G. L. Fugate, or his successor, Dr. J. M. Howe, began on June 12, 1931 and expired six years thereafter, on June 12, 1937. Since the law provides for a six-year term thereafter, the next six-year term for him or his lawful successor, if any, will expire on June 12, 1943.

Since you have not furnished us with the record of all the members of the State Board of Health from its first members down to the present, as we have previously requested, obviously we cannot answer your inquiries specifically with reference to the termination of the respective terms of office of the present members of the Board. We believe, however, that we have answered your inquiries in such a manner that you can easily ascertain this from a reference to your records, or to those in the office of the Secretary of State.

If there have been any vacancies, such as deaths, resignation, removal for cause, or a vacancy as otherwise provided or contemplated by law, the successor appointee, if any, to the vacancy would hold office only for the unexpired term of his predecessor.

We have already answered your third question in this opinion by holding that the date of the beginning of the terms of office of the members of the Board of Health were established and began from the date of the first appointment.

We trust we have fully answered the questions submitted in your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Harold McCracken

Harold McCracken
Assistant

HM:RS:egw.

APPROVED FEB 7, 1941
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION COMMITTEE
BY B W B
Chairman